Question Q217

National Group:	**Denmark/Dänemark/Danemark**
Title:	**The patentability criteria for inventive step/non-obviousness**
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Date:	**26 April, 2011**

Questions

I. Analysis of current law and case law

Level of inventive step / non-obviousness

1. What is the standard for inventive step / non-obviousness in your jurisdiction? How is it defined?

2. Has the standard changed in the last 20 years? Has the standard evolved with the technical/industrial evolution of your jurisdiction?

As an introduction it should be mentioned that Denmark has been a party to the European Patent Convention (EPC) since 1990 and that the Danish Patents Act in all significant respects was adapted to “EPC 1973” already in 1978. At that time it was the opinion of most Danish scholars and practitioners that the Nordic examination standards represented the “middle way” between the former German and UK practice and no major change was therefore envisaged. Already prior to 1990, applicants would therefore frequently refer to the grant of a parallel EP patent in support of their DK application, prosecution of which in general was severely delayed due to a heavy backlog in the DK/PTO. As a consequence, the DK/PTO adopted a “compact prosecution” according to which it would consider whether the parallel EP patent could serve as a “model “for a DK patent and generally speaking the

DK/PTO and the Board of Patent Appeals gradually aligned its prior examination practice, e.g. re inventive unity and allowability of claims to “analogy processes”, to EP practice.

The Danish Patents Act, section 2(1) provides that:

“Patents shall be granted only for inventions which are new in relation to the state of the art and which, moreover, differ essentially therefrom“.

This provision sets up two independent requirements for patentability, i.e., novelty and inventive step, *vide* also Art. 54 and 56 EPC.

This definition is not particularly helpful, but is clarified in the DK/PTO examination guidelines which in their present wording for all practical purposes are a translation of the EPO guidelines:

“An invention is considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art “(Guidelines C-IV.11.1).

The application of this standard did not follow a formalistic approach until 2008, when the DK/PTO announced officially that from now on, it would follow the “problem-and-solution approach“ in the examination for inventive step. At about the same time, the Patents Act was also harmonized with EPC 2000.

Concluding from the above it seems fair to say that the standard for inventive step has been the same as in the EPO since 1978 and that the application of this standard has developed from the less formalistic “German” approach to the more formalistic “problem–and-solution approach”. For a more elaborate discussion, see our answer to Question 28.

3. Does your patent-granting authority publish examination guidelines on inventive step / non-obviousness? If yes, how useful and effective are the guidelines?

Yes, as mentioned above. The guidelines are published on the DK/PTO homepage and are very useful. Still, there are often discussions with the Examiners about the correct approach.

4. Does the standard for inventive step / non-obviousness differ during examination versus litigation or invalidity proceedings?

The standard does not differ. The DK/PTO has expressly declared to use the problem-and-solution approach. The courts might use the problem-solution approach but are not bound to do so. However , there is no case law specifically dealing with this point .

Construction of claims and interpretation of prior art

5. How are the claims construed in your jurisdiction? Are they read literally, or as would be understood by a person skilled in the art?

In Denmark, the construction of the claims follows the established practice of the EPO, i.e. a claim is generally read giving the words the meaning and scope which they normally have in the relevant art, unless in particular cases the description gives the words a special meaning, by explicit definition or otherwise. The claims should also be read with an attempt to make technical sense out of it. Such a reading may involve a departure from the strict literal meaning of the wording of the claims. The Danish courts consider, whenever applicable, the

questions of infringement and validity during the same proceedings, and the courts apply the same claim construction as regards the determination of the scope of protection and as regards validity.

6. Is it possible to read embodiments from the body of the specification into the claims?

Generally, the description and drawings are used to interpret the claims when an objective assessment of the content of a claim has to be made in order to judge whether its subject-matter is novel and non-obvious. In particular, the description and drawings are used for the purpose of the interpretation of relative, ambiguous or unclear terms. However, only features recited in or deducible from the claims may be used to distinguish the invention from the state of the art. Reading limitations derived from the description into claims in order to avoid objections based on lack of inventive step is generally not permissible. In exceptional cases, a claim, which is clear on its own wording, might also have to be interpreted in the light of the description if it does not contain a feature, which is specified in the description to be an overriding requirement of the invention, as in T 416/87 of the Boards of Appeal of the EPO.

7. How is the prior art interpreted? Is it read literally or interpreted as would be understood by a person skilled in the art? Is reliance on inherent disclosures (aspects of the prior art that are not explicitly mentioned but would be understood to be present by a person skilled in the art) permitted?

The prior art is interpreted as understood by the skilled person. The disclosure of the prior art is thus determined by what knowledge and understanding can and may be expected of the average skilled person in the technical field in question. Generally, each part of a prior art document has to be construed in the context of the contents of the document as a whole. The disclosure of a prior art document is limited to what is directly and unambiguously derivable from that document including any features implicit to a person skilled in the art in what is expressly mentioned in the document.

8. Do the answers to any of the questions above differ during examination versus during litigation?

The same principles of interpretation of the claims and the prior art apply during examination and litigation. However, as regards the interpretation of the claims, if it is necessary to rely on the description when interpreting of an unclear claim during examination, a clarifying amendment of the claim may be required. During litigation the prosecution history of the patent may also be taken into account.

Combination or modification of prior art

9. Is it proper in your jurisdiction to find lack of inventive step or obviousness over a single prior art reference? If yes, and assuming the claim is novel over the prior art reference, what is required to provide the missing teaching(s)? Is argument sufficient? Is the level of the common general knowledge an issue to be considered?

Yes it is proper to find lack of inventive step over a single prior art reference. Assuming that the claim is novel over the prior art reference, one could argue that the novel feature or the novel embodiment of the claim is obvious for a number of different reasons. One reason is that the novel feature or novel embodiment could be an obvious combination of different embodiments described in the prior art reference. Another reason is that the novel feature or novel embodiment is a well-known equivalent. Another reason is that a combination of the

prior art reference together with common general knowledge renders the claim obvious. In this case, the level of the common general knowledge is an issue to be considered. Here the standards laid down by the case law of the EPO will apply.

10. What is required to combine two or more prior art references? Is an explicit teaching or motivation to combine required?

In order to combine two or more prior art references, it is required to substantiate that the person skilled in the art would have a reason to combine the two or more prior art references (a “pointer”). Explicit teaching or explicit motivation is not required, but some form of motivation, is required. For example, motivation could be provided by the person skilled in the art attempting to solve a known technical problem. Motivation could also be provided by the person skilled in the art attempting to improve a known process or product, for example, to make it cheaper, faster, more productive, etc. Generally speaking the “would/could doctrine” as applied at the EPO applies also in Denmark. The would/could doctrine states that in order for a combination to lack inventive step, it must be shown that the person skilled in the “would” have arrived at the combination. It is not enough to state that the person skilled in the art “could” have arrived at the combination.

11. When two or more prior art references are combined, how relevant is the closeness of the technical field to what is being claimed? How relevant is the problem the inventor of the claim in question was trying to solve?

When combining two or more prior art references, it is generally required that at least one of the references is close to the technical field of what is being claimed. However, the closeness of the technical field of the remaining documents is not as important as the problem which the inventor of the claim is trying to solve, as long as the inventor would have had some reason to be looking in another technical area for the solution to his or her problem. In general, the more remote the technical areas, the more compelling the reason for combination should be in order to result in lack of inventive step.

12. Is it permitted in your jurisdiction to combine more than two references to show lack of inventive step or obviousness? Is the standard different from when only two references are combined?

A combination of more than two references to show lack of inventive step of a single novel feature is not generally accepted. However, claims which comprise at least two novel features which share no synergy, can be attacked using more than two references, for example D1+D2 for feature 1 and D1+D3 for feature 2. However, if feature 1 and feature 2 have synergy, where the combination of feature 1 and feature 2 results in something more than one could expect from a combination of feature 1 and 2, then one cannot use D1+D2 for feature 1 and D1+D3 for feature 2. However, although the combination of more than two references might often been seen as “mosaicking“ or “hindsight reverse engineering“, there are situations where the third document is “incorporated“ in the second document either directly “by reference” or the second document is a review article the teaching of which can be better understood by reading a referenced article.

13. Do the answers to any of the questions above differ during examination versus during litigation?

No.

Technical Problem

14. What role, if any, does the technical problem to be solved play in determining inventive step or non-obviousness?

Since the “problem-and-solution approach” is used for the assessment of inventive step and since one of the steps in this approach is to “define the objective technical problem to be solved”, the technical problem plays a key role in the determination of inventive step. Furthermore, it can be noted that if the relevant technical problem is not derivable from the alleged closest prior art, then the measures for its solution were *a fortiori* not derivable, and the invention is therefore non obvious in the light of such art.

15. To what degree, if any, must the technical problem be disclosed or identified in the specification?

According to Danish practice an applicant’s description must disclose the invention as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood and state any advantageous effect of the invention with reference to the background art. If the technical problem is reformulated during prosecution, for instance due to newly discovered prior art which is closer to the invention than that cited in the original application, the reformulated technical problem must be derivable from the application as filed.

Advantageous effects

16. What role, if any, do advantageous effects play in determining inventive step or non-obviousness?

An unexpected technical effect or advantageous effect of an invention is an indicator of inventive step. In particular if the invention is shown to be of considerable technical value, and if the technical advantage is new and surprising and can be attributed to one or more of the features of the claim an inventive step will often be acknowledged. However, if the effect is merely an effect obtained due to lack of alternatives, thus creating a one-way street situation, in which the effect is merely a bonus effect, said effect cannot be used to support inventive step. If it is obvious for the skilled person to combine prior art teachings in order to solve an essential part of the problem, the presence of even an unexpected extra effect allowing another part of the problem to be solved at the same time does not in principle imply the presence of inventive step.

17. Must the advantageous effects be disclosed in the as-filed specification?

Not necessarily. The evidence to be considered by the Examiner for assessing inventive step may either be taken from the application as filed or submitted by the applicant during prosecution. However, if new effects not disclosed in the application as filed are referred to, such new effects can only be taken into account if they are implied by or at least related to the technical problem initially suggested in the application as filed (for instance that therapeutically active compounds are less toxic than the compounds in newly found prior art).

18. Is it possible to have later-submitted data considered by the Examiner?

Yes. It is possible to post-file data supporting the existence of an inventive step and/or that the invention works over the whole scope of the claims. Such data will not become part of the application as such, but will become part of the official file of the application and a note will be made at the front page of the patent.

19. *How "real" must the advantageous effects be? Are paper or hypothetical examples sufficient?*

Any advantageous effects should ideally be based on concrete examples showing said effects. If only hypothetical examples are present in the specification and if the validity of said examples is questioned then the applicant has the burden of proof for showing that the effect does indeed exist. Thus alleged advantages to which the patent proprietor/applicant refers, without offering sufficient evidence to support the comparison with the closest prior art, cannot be taken into consideration in assessing inventive step.

20. Do the answers to any of the questions above differ during examination versus during litigation?

The same principles of evaluation of advantageous effects apply during examination and litigation. However, the burden of proof shifts from the examination stage to litigation. Thus during examination the burden of proof for establishing an effect rests with the patent applicant, whereas during litigation any third party questioning the substantiation of an advantage or technical effect has the burden of proving that such an advantage does not exist. This only applies in relation to prior art considered during prosecution and only in relation to the examined set of claims

Teaching away

21. Does your jurisdiction recognize teaching away as a factor in favour of inventive step / non-obviousness? Must the teaching be explicit?

Teaching away is certainly recognized and the term is used both by applicants and examiners, but not as a "doctrine" and often in other terms. Obviousness over a combination of two pieces of prior art often requires "a reasonable expectation of success" or "a pointer" to the combination.

Frequently one would therefore see expressions such as "a skilled person would not get any hint from document X" or "the effect could not have been predicted" or "the teaching obtained from the further prior art would not have prompted the skilled person to modify the closest prior art", all of which could be translated into a "teaching away".

It must always be seen in the context of the problem to be solved and must probably be fairly explicit.

22. Among the other factors supporting inventive step / non-obviousness, how important is teaching away?

As stated above it is not a "doctrine" and often comes in disguise. But it is certainly something, an applicant would always be on look-out for.

23. Is there any difference in how teaching away is applied during examination versus in litigation?

Not to our knowledge, but it might be possible to show more convincingly by witness testimony in court.

Secondary considerations

24. Are secondary considerations recognized in your jurisdiction?

Yes, however, a mere investigation for indications of the presence of inventive step is no substitute for the technically skilled assessment of the invention vis-á-vis the state of the art. Where such indications are present, the overall picture of the state of the art and consideration of all significant factors may show that inventive step is involved but this need not necessary always be the case. Secondary indicia of this kind are only of importance in cases of doubt, i.e. when objective evaluation of the prior art teachings has yet to provide a clear picture.

25. If yes, what are the accepted secondary considerations? How and to what degree must they be proven? Is a close connection between the claimed invention and the secondary considerations required?

a) Inventiveness can sometimes be established by demonstrating that a known prejudice, i.e. a widely held but incorrect opinion of a technical fact, needs to be overcome. The prejudice must have existed at the priority date. One form of "technical prejudice" is development of the art in a different direction.
b) The age of documents known long before the filing data might only be an indication of an inventive step if a need for the solution of an unsolved problem had existed for the entire period between the date of the documents and that of the invention. In T 1077/92, the period of time was more than 100 years.
c) The fact that the state of the art has been inactive over a long period of time prior to the invention may be an indication that an inventive step is involved if during that time an urgent need for improvement had demonstrably existed (long-felt need).
d) In principle, commercial success alone is not to be regarded as indicative of inventive step. A long-felt need must have been fulfilled, and the commercial success must derive from the technical features of the invention and not from other influences (e.g. selling technique or advertising). The commercial success was important for acceptance of inventiveness in T 677/91 & 626/96.
e) Market competitor's efforts to obtain rights of joint use constitute further secondary indicia closely related to commercial success. They may result in a positive decision on inventive step, but need not necessarily do so. Market competitor's efforts were important for acceptance of inventiveness in T 812/92 & 252/06.
f) In a technical field of commercial importance to which considerable attention is directed the simplicity of a proposed solution may indicate inventive step.
g) An effect which may be said to be unexpected can be regarded as an indication of inventive step. However, an unexpected bonus effect does not confer inventiveness on an obvious solution.
h) According to the established jurisprudence, a surprising effect (advantageous effect or feature) demonstrated in a comparative test can be taken as an indication of inventive step. If comparative tests are chosen to demonstrate an inventive step on the basis of an

improved effect, the nature of the comparison with the closest state of the art must be such that the alleged advantage or effect is convincingly shown to have its origin in the distinguishing feature of the invention compared with the closest state of the art.

26. Do the answers to any of the questions above differ during examination versus during litigation?

No.

Other considerations

27. In addition to the subjects discussed in questions 4 - 26 above, are there other issues, tests, or factors that are taken into consideration in determining inventive step / non-obviousness in your jurisdiction? If yes, please describe these issues, tests, or factors.

In determining the presence or absence of inventive step, normally no additional issues, tests, or factors other than those discussed above are taken into consideration.

Nevertheless, there are further general principles relevant for the assessment of inventive step such as the principle that hindsight is to be avoided when assessing inventive step, and that only features which contribute to the technical character of an invention are to be considered when assessing inventive step.

Finally, it may be worthwhile noting that Danish law provides for utility models, and the standard for inventive step of utility models is generally lower than for patents. A Danish utility model may be branched off from a European patent application, even during a period after the European patent application has been withdrawn or finally refused.

Test

28. What is the specific statement of the test for inventive step/non-obviousness in your jurisdiction? Is there jurisprudence or other authoritative literature interpreting the meaning of such test and, if so, provide a brief summary of such interpretation.

As earlier stated, in the examination of inventive step of Danish patents, the Problem-and-Solution Approach (PSA) as used by the European Patent Office is used.

The specific statement of the test for inventive step is a method which comprises the following three steps:

1. determination of the “closest prior art”,
2. formulation of the “objective technical problem” which is to be solved, and
3. evaluating if the claimed invention, based on the closest prior art and the objective technical problem, is obvious to the person skilled in the art.

The section related to inventive step in the Danish “Patenthåndbog” (Patent handbook) is a direct translation of the Guidelines for Examination in the European Patent Office.

The Guidelines for Examination in the European Patent Office provide an interpretation of the PSA and provide a number of examples of the application of the PSA.

In general, for proper application of the PSA, it is important to find one particular prior art reference which is the “closest prior art” in comparison to other prior art references. The

“Closest prior art” document is the document which comprises the largest number of technical features of the claimed invention in question and which provides the most obvious starting point for the person skilled in the art.

The formulation of the “Objective technical problem” is then developed by comparing the claimed invention to the closest prior art and finding the distinguishing feature of the claimed invention when related to the closest prior art. The objective technical problem is then formulated in such a way that the solution to the problem is provided by the distinguishing feature.

In the final step, it is evaluated if the person skilled in the art, when starting with the closest prior art would have been inspired to solve the Objective Technical Problem by applying the distinguishing feature of the claimed invention. If the answer to this question is Yes then the claimed invention is obvious.

In interpreting the problem solution approach and inventive step in general, the case law of the European Patent Office and the case law of the Danish patent office and the Danish courts can also be cited during examination before the Danish Patent Office.

29. Does such test differ during examination versus during litigation?

No. See, however, the answer to question 4 above.

Patent granting authorities versus courts

30. If there are areas not already described above where the approach to inventive step/non-obviousness taken during examination diverges from that taken by courts, please describe these areas.

The burden of proof, i.e. of establishing the existence of an inventive step, will shift from examination to litigation, see question 20 above.

31. Is divergence in approach to inventive step/non-obviousness between the courts and the patent granting authority in your jurisdiction problematic?

Not applicable.

Regional and national patent granting authorities

32. If you have two patent granting authorities covering your jurisdiction, do they diverge in their approach to inventive step/non-obviousness?

No, as stated several times the DK/PTO has adopted the PSA used by the EPO in an attempt to avoid any divergence.

33. If yes, is this problematic?

Not applicable.

II. Proposals for harmonization

34. Is harmonization of inventive step/non-obviousness desirable?

Yes.

35. Is it possible to find a standard for inventive step/non-obviousness that would be universally acceptable?

Time will show!!!!

36. Please propose a definition for inventive step/non-obviousness that you would consider to be broadly acceptable.

The Danish group supports the definition proposed by WIPO in the SPLT draft, version A thereof, i.e.:

"An invention shall be considered to involve an inventive step (be non-obvious) if, having regard to the prior art, it would not have been obvious to a person skilled in the art at the filing date or, where priority is claimed, the priority date of the application claiming the invention."

37. Please propose an approach to the application of this definition that could be used by examiners and by courts in determining inventive step/non-obviousness.

The Danish group considers the problem-and-solution approach as a suitable basis for developing a harmonised test for inventive step.

Consideration of secondary indicia such as prejudice, age of documents, long-felt need, commercial success, market competitor's effort to obtain rights of joint use, simplicity and bonus effect should not be excluded as supplementary indicia for the presence of an inventive step.

Additionally, the Danish group considers the following principles of interpretation of the prior art and the claims as a possible basis for a harmonised system:

- Both the prior art and the claims are to be interpreted in the context of the document as a whole.
- Both the prior art and the claims are to be interpreted as understood by the relevant skilled person.
- Only features recited in or deducible from the claims may be used to distinguish the invention from the state of the art and in support of inventive step.

Finally, in a harmonised system, the standard for inventive step should be the same during grant proceedings and litigation.

Summary

In 1978, the Danish Patents Act was adapted to EPC 1973. Since 1990, Denmark has been a party to the EPC and the Danish Patent Office has for many years prosecuted the Danish applications in accordance with the practice before the EPO. Hence, the Danish Patent Office is using the Problem-and-Solution Approach. In Denmark, the construction of the claims follows the established practice of the EPO.

It is proper to find lack of inventive step over a single prior art reference. In order to combine two or more prior art references, it is required to substantiate that the person skilled in the art would have a reason to combine the two or more pieces of prior art references (a “pointer”). A combination of more than two references to show lack of inventive step of a single novel feature is not generally accepted.

The evidence to be considered by the Examiner for assessing inventive step may either be taken from the application as filed or submitted by the applicant during prosecution. It is possible to post-file data supporting the existence of an inventive step and/or that the invention works over the whole scope of the claims.

The same principles of interpretation of the claims and the prior art apply during examination and litigation. During litigation, the prosecution history of the patent may be taken into account.

With the aim of harmonisation, the Danish group supports the definition proposed by WIPO in the SPLT draft, version A thereof, i.e.: “*An invention shall be considered to involve an inventive step (be non-obvious) if, having regard to the prior art, it would not have been obvious to a person skilled in the art at the filing date or, where priority is claimed, the priority date of the application claiming the invention.*”

Zusammenfassung

Im Jahre 1978 wurde das Dänische Patentgesetz an das EPÜ 1973 angepasst. Dänemark ist seit 1990 ein EPÜ-Vertragsstaat, und das Dänische Patentamt prüft seit vielen Jahren die dänischen Patentanmeldungen in Übereinstimmung mit der Rechtsprechung der EPA. Folglich verwendet das Dänische Patentamt den Aufgabe-Lösungs-Ansatz. In Dänemark richtet sich das Erstellen der Patentansprüche nach der von dem EPA festgelegten Rechtsprechung.

Es ist durchaus möglich, eine fehlende erfinderische Tätigkeit im Verhältnis zu einer einzelnen Entgegenhaltung aus dem Stand der Technik zu finden. Bei einem Kombinieren von zwei oder mehr Entgegenhaltungen aus dem Stand der Technik muss der Fachmann nachweisen, dass er einen Grund dazu hat, die beiden oder mehreren Entgegenhaltungen aus dem Stand der Technik (ein "Pointer") zu kombinieren. Eine Kombination von mehr als zwei Entgegenhaltungen zum Nachweis einer fehlenden erfinderischen Tätigkeit bei einem einzelnen neuen Merkmal ist im Allgemeinen nicht gebilligt.

Die vom Prüfer bei der Beurteilung der erfinderischen Tätigkeit zu berücksichtigenden Beweismittel können entweder in der ursprünglichen Patentanmeldung enthalten sein oder vom Anmelder im Laufe des Prüfungsverfahrens eingereicht werden. Eine nachfolgende Einreichung von Daten, die unterstützten, dass eine erfinderische Tätigkeit vorliegt, oder dass die Erfindung über den ganzen Umfang der Patentansprüche gilt, ist möglich.

Die gleichen Prinzipien für die Auslegung der Ansprüche und der erfinderischen Tätigkeit gelten während des Prüfungs- und Gerichtsverfahrens. Während des Gerichtsverfahrens können die Erteilungsakten des Patents berücksichtigt werden.

Zum Zweck der Harmonisierung unterstützt die dänische Gruppe die im SPLT-Entwurf, Version A, durch WIPO vorgeschlagene Definition, d.h.: "Eine Erfindung gilt als beinhaltend eine erfinderische Tätigkeit (nicht naheliegend), wenn sie sich für einen Fachmann vor dem Anmeldetag oder, bei Inanspruchnahme der Priorität, vor dem Prioritätstag der die Erfindung beanspruchenden Anmeldung nicht in naheliegender Weise aus dem Stand der Technik ergeben hätte".

Résumé

En 1978, la loi danoise sur les brevets a été adaptée à la CBE 1973. Depuis 1990, le Danemark est un Etat membre de la CBE, et depuis plusieurs années, l'Office danois des brevets et des marques poursuit les demandes de brevets danoises selon la pratique suivie à l'OEB. C'est la raison pour laquelle l'Office danois des brevets et des marques utilise la méthode d'analyse élaborée, appelée approche problème-solution. Au Danemark, la construction des revendications suit la pratique établie de l'OEB.

Il est approprié de démontrer le défaut d'activité inventive résultant d'un seul document de l'art intérieur. Afin de pouvoir combiner deux éléments de l'art intérieur ou plus pour démontrer le défaut d'activité inventive, il doit être démontré que l'homme du métier aurait été conduit à combiner deux pièces ou plus de documents de l'art intérieur (un « pointeur »). Le fait de devoir combiner plus de deux éléments de l'art antérieur pour démontrer le défaut d'activité inventive d'un seul caractère de nouveauté est généralement considéré comme étant inapproprié.

Les arguments et moyens de preuves pertinents que l'examinateur prend en considération pour apprécier l'activité inventive peuvent figurer dans la demande de brevet initiale, ou être présentés par le demandeur au cours de la procédure ultérieure. Il est possible de présenter ultérieurement des données en support de l'existence d'une activité inventive, et/ou de ce que l'invention s'applique à tout le domaine des revendications.

Les mêmes principes d'interprétation des revendications et de l'art antérieur s'appliquent lors de l'examen et des litiges. Lors des litiges, l'historique de la poursuite du brevet peut être considéré.

Visant à l'harmonisation, le groupe danois soutient la définition proposée par l'OMPI dans la variante A du projet de Traité SLPT, à savoir:
« Une invention est considérée comme impliquant une activité inventive (comme n'étant pas évidente) au cas où, compte tenu de l'état de la technique, elle n'aurait pas été évidente pour un homme du métier à la date de dépôt ou, lorsqu'une priorité est revendiquée, à la date de priorité de la demande dans laquelle elle est revendiquée ».